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Jane Ranum

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MINNESOTA'S PERMANENCY AND CONCURRENT PLANNING CHILD WELFARE SYSTEM

Senator Jane Ranum†

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*"The hallmark of good child welfare social work is the ability to rapidly secure a child's physical and emotional well-being in the context of her family of origin or in another permanent family."*¹

*"Sara." A case study.*²

Sara, a child at risk for potential abuse, was referred to Child Protection Services at birth. Sara's twenty-seven year old mother was a limited and emotionally needy person who herself had been abused as a child. Sara's mother was known to have problems with drugs and alcohol. Five years before Sara's birth, her mother had voluntarily terminated her parental rights to Sara's brother, who had suffered extreme physical abuse and emotional trauma while in her care. Sara's mother told authorities that she wanted to keep Sara and have another chance to be a good mother. After Sara's

† Jane Ranum is chair of the Senate Judiciary Committee and a Hennepin County prosecutor. In 1998, she was the chief author of legislation that established concurrent planning in Minnesota and other major child welfare reforms.

1. MARY FORD, THREE CONCURRENT PLANNING PROGRAMS: HOW THEY BENEFIT CHILDREN AND SUPPORT PERMANENCY PLANNING FAMILIES 2 (1998).

2. See ALBERT J. SOLNIT, ET AL., WHEN HOME IS NO HAVEN 59-60 (1992). Sara is a fictional name to protect the confidences of those seeking help from the child services. This story is a compilation of two cases woven together to represent one typical case. See *id.*

birth, her mother received hours of parenting education services from a parent aide and a supervising social worker.

The first three months of Sara's life went reasonably well, until the night Sara was brought to the emergency room with severe multiple facial bruises. Sara's father admitted injuring Sara while under the influence of alcohol. Sara's mother was unwilling to leave him.

From that night on, Sara had a series of caretakers. She spent six weeks with one foster family, two weeks with another foster mother and then several weeks again with her original foster family. When Sara was nine months old, she was returned to her biological mother. As part of the reunification process, services were provided to help the mother with her parenting skills. The plan failed, and for the third time Sara was again placed with her original foster parents until they moved out of state one month after her placement.

Consequently, at one year old, Sara was placed with yet another foster family, a move that represented her seventh change of home. A petition was filed for termination of the birth mother's parental rights. The foster parents filed for Sara's adoption. By the time Sara was finally adopted into her new home, she experienced four sets of caretakers and had undergone seven moves in a twenty-month period.

I. INTRODUCTION

Sara's story is unfortunately a common one in the United States foster care system. Numerous transfers from one caregiver to another can have a negative impact on a child's development and sense of belonging to a home. Minnesota's concurrent planning system was designed to solve this problem by reducing the number of moves, thus helping children develop a sense of permanency vital to their well being.

Concurrent planning is a form of permanency planning that seeks to limit the amount of time a child, in the child welfare system, waits for a permanent home. The focus of concurrent planning is on those children for whom reunification with a parent is not likely.

In the past, these children faced prolonged periods in which permanency was in question. Under Minnesota's previous child welfare system, initial reunification efforts with birth parents were attempted. If the reunification efforts were unsuccessful,

proceedings to terminate parental rights were initiated and adoption proceedings followed. The different placement options available were: adoption, including open adoption; transfer of legal custody to a relative; or, in some cases, long term foster care.

The goal of concurrent planning is to abridge this process so that reunification efforts occur simultaneously with other efforts to establish a permanent home for the child. Contrary to its conceptual simplicity, Minnesota concurrent planning is the product of a decade long effort to promote permanency. These efforts were propelled, to a great extent, by federal government actions.

II. FEDERAL EFFORTS TOWARDS CONCURRENT PLANNING

The best practice social work concept known as permanency planning was first introduced into the federal framework for the operation of state and local child welfare agencies in 1980 with passage of the Adoption Assistance and Child Welfare Act of 1980.³ The Act's laudatory goals were to discourage excessive reliance on foster care placement and to permit greater use of services assisting in family reunification.⁴

Unfortunately, the legislative goals were not realized for thousands of children, and disproportionately for children of color. Recent data shows that while children of color make up 35% of the general population, these children make up 64% of the children in foster care.⁵ Furthermore, children of color are more likely than white children to be placed in foster care and once placed, generally stay in foster care longer and wait to be adopted longer than white children.⁶

In December 1996, President Clinton directed the Secretary of the Department of Health and Human Services, Donna Shalala, to conduct consultations and provide specific strategies to move children more quickly from foster care to permanent homes.⁷ His goal was to double the number of adoptions or permanent

3. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified at 42 U.S.C. §§ 620-628a, 670-679a (1994 & Supp. III 1997)).

4. See DONALD N. DUQUETTE & MARK HARDIN, U.S. DEP'T OF HEALTH AND HUMAN SERV., GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN I-4 (1999).

5. See *id.*

6. See *id.* at I-9.

7. See FORD, *supra* note 1, at ix.

placements in five years.⁸ As a result, Secretary Shalala issued her Adoption 2000 Blueprint in February 1997, based on the following eight assumptions:

- 1) Every child deserves a safe and permanent family;
- 2) Children's health and safety is a paramount concern that must guide all child welfare services;
- 3) Children deserve prompt and timely decision-making as to who their permanent caregivers will be;
- 4) Permanency planning begins when a child enters foster care; foster care is a temporary setting;
- 5) Adoption is one of the pathways to a permanent family;
- 6) Adoptive families require support after the child's adoption is legalized;
- 7) The diversity and strengths of all communities must be tapped; and
- 8) Quality services must be provided as quickly as possible to enable families in crisis to address problems.⁹

The President's executive memorandum set the goals and Secretary Shalala's blueprint laid the framework for bi-partisan federal leadership in adoption and other permanent placement for children in public child welfare systems. However, it was the passage of the Adoption and Safe Families Act of 1997 (ASFA)¹⁰ that most comprehensively addressed critical permanency issues in the child welfare area.¹¹

ASFA legislation evolved from key assumptions laid out in the Adoption 2000 Blueprint. Enactment of this legislation laid the groundwork for major state child welfare reform. Five key principles of ASFA are:

- 1) Safety is a paramount concern that must guide all child welfare services;
- 2) Foster care is temporary;

8. *See id.*

9. *See* DUQUETTE & HARDIN, *supra* note 4, at I-2.

10. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified at 42 U.S.C. § 671 (1994)).

11. *See id.*; *see also* DUQUETTE & HARDIN, *supra* note 4, at I-2.

- 3) Child welfare system must focus on results and accountability;
- 4) Innovative approaches are needed to achieve the goals of safety, permanency, and well-being; and
- 5) Permanency planning efforts should begin as soon as a child enters care.¹²

While ASFA did not require states to adopt concurrent planning, the Act opened the door for states like Minnesota to establish concurrent planning programs. ASFA assisted the states by providing that “reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts” to preserve and reunify families.¹³ ASFA also provided technical assistance in the use of concurrent planning methods and by providing “adoption incentive” payments to states that increase their number of adoptions.¹⁴

III. MINNESOTA’S CONCURRENT PLANNING SYSTEM

In reviewing the child welfare policy history in the decade proceeding the 1998 reforms, it should come as no surprise that Minnesota was poised to make major changes, such as concurrent planning, when federal law permitted those changes. There were a number of significant events in Minnesota that influenced the 1998 changes.

First, in 1993, the Minnesota Legislature enacted legislation that established permanency hearing timelines stricter than those provided by federal law.¹⁵ Minnesota law set the “permanent placement determination hearing” for twelve months after out-of-home placement rather than the eighteen months federal law required.¹⁶

The second event that influenced the changes was the appointment and report of the Supreme Court Task Force on

12. See DUQUETTE & HARDIN, *supra* note 4, at I-5 & I-6.

13. Pub. L. No. 105-89, 111 Stat. 2115 (codified at 42 U.S.C. § 671(a)(15)(F) (1994)); see also FORD *supra* note 1, at 4.

14. See FORD, *supra* note 1, at 4.

15. See MINN. STAT. § 260C.201 (Supp. 1999) (formerly codified as MINN. STAT. § 260.191 (1998)).

16. See MINNESOTA SUPREME COURT FOSTER CARE AND ADOPTION TASK FORCE, FINAL REPORT 41-42 (1997).

Foster Care and Adoption.¹⁷ In October 1995, the task force convened to “assess the extent to which existing rules, standards, procedures, policies and laws facilitate or impede achievement of permanent and safe placement for children”¹⁸ In January 1997, the task force issued a report that highlighted a number of ways to improve the foster care and adoption system.¹⁹ Among the task force’s many recommendations was:

- 1) a greater emphasis on, and definition of, the “best interests” of the child;²⁰
- 2) a clarification of when the “permanency time clock” begins ticking for certain children placed out of home;²¹
- 3) improvement of proceedings to transfer legal and physical custody to relatives;²² and
- 4) improvements to adoption practices to expedite adoption proceedings, to facilitate open adoptions, and to facilitate the recruitment of adoptive families and foster care families.²³

These recommendations were consistent with AFSA’s direction.

Third, the issuance of the Legislative Auditor’s Report on Child Protection in 1998²⁴ also helped facilitate the changes. While the report did not specifically highlight permanency issues, it did add a sense of urgency on the part of policy-makers that the child protection system needed a great deal of improvement. The study made a number of recommendations, including the recommendation that the state develop clearer definitions of maltreatment; perform better interventions in cases of child neglect; and make sure that counties’ child protection agencies are acting in the children’s best interests.²⁵

Fourth, the University of Minnesota conducted a nationally

17. *See id.*

18. *See id.* at 4.

19. *See id.*

20. *Id.* at 36-39.

21. *Id.* at 41-42.

22. *Id.* at 57.

23. *Id.* at 60-94.

24. *See* PROGRAM EVALUATION DIV. OFFICE OF THE LEGISLATIVE AUDITOR, CHILD PROTECTIVE SERVICES (1998).

25. *See id.* at xxi-xxii.

recognized research project on child-adult attachment/bonding. Minnesota policy-makers have the benefit of easy access to the University of Minnesota's well-recognized researchers on child-adult attachment and bonding. Doctors Martha Farrell Erickson, Alan Sroufe, and Byron Egelund are pioneers in researching the significance of child-adult attachment in children's healthy development, and the consequences of maltreatment on attachment. Their work has had a significant impact on many Minnesota legislators' understanding of child development and has increased the level of awareness of the detrimental effect on young children of poor parenting and multiple, out-of-home placements.

Lastly, in recent years, the Minnesota Legislature has enacted several pieces of legislation intended to facilitate adoption by relatives, open adoption and family group conferencing.²⁶

IV. THE BASICS OF CONCURRENT PLANNING

The concept of concurrent planning, as with permanency issues in general, emerged at the confluence of two predominant themes in the child welfare arena. These themes are the attachment theory²⁷ and "foster care drift."²⁸ Researchers and practitioners alike were concerned about the impact that prolonged and multiple out-of-home placements have on children's development of healthy and permanent attachments with their primary caregivers.

26. See *infra* Part V.

27. See MARTHA FARRELL ERICKSON, UNIVERSITY OF MINN., CHILD-ADULT ATTACHMENT: A LENS FOR VIEWING DECISIONS THAT AFFECT CHILDREN AND FAMILIES i (on file with author). Erickson writes:

Secure attachment in infancy lays the foundation for healthy, competent development in later years. Without it, children are at risk. They are likely to have difficulty forming relationships, exhibit anti-social behavior, and lack confidence, enthusiasm and persistence that facilitate success in school and work. . . . Attachment is a mutual, reciprocal relationship in which the child becomes a knowing partner. It is a relationship that develops gradually during the early months and years of a child's life.

Id.

28. "Foster care drift" is a term used to describe the experience of children for whom "temporary" out of home placement becomes a virtually permanent situation. See generally Marsha Garrison, *Why Terminate Parental Rights?* 35 STAN. L. REV. 423 (1983) (noting that a child in foster care for an indeterminate period of time, may be placed in several different homes, and may be unable to form attachments to parents or foster parents).

Maltreated children who are already at risk of suffering unhealthy attachments as a result of poor parenting, are jeopardized even further by languishing in foster care.²⁹ Young children in particular are vulnerable to the lack of permanency's ill effects. Unfortunately, young children make up a large percentage of children in out-of-home care. In 1995, 33% of children in out of home care were ages zero to five, and 27% were ages six to ten.³⁰ These statistics are compounded by the fact that "children under the age of five are twice as likely as older children to enter foster care, and infants are at the highest risk for long term foster care."³¹

When Minnesota legislators began to consider concurrent planning as a response to the critical need for permanency for young children at risk, they looked to two other states in which successful concurrent planning programs had been established—Washington and Colorado. Washington's program, developed through Lutheran Social Services (LSS) of Washington and Idaho in the early 1980s, has become a national model for concurrent planning. Today, the average length of stay in foster care for children served by LSS is ten months, and 92% of the children experience only one placement.³²

LSS was, in fact, the model used by Jefferson County, Colorado, when it established concurrent planning in 1994 as part of its Expedited Permanency Planning legislation. A recent study shows that children in Jefferson County who are the recipients of concurrent planning "achieved permanence at 12 months *at almost*

29. Interview with Byron Egelund, Considering Attachment Issues in Permanency Decision, under the auspice of the Center for Advanced Studies in Child Welfare (June 24, 1998). Dr. Egelund states that maltreatment:

leads to serious problems in every area of development. There is a higher incidence of educational problems such as school dropout, behavior problems, such as conduct disorder (oppositional-defiant kinds of behavior), criminal activity, and social problems such as rejection and isolation. There is a much higher incidence of mental health problems, and mental health problems in the maltreated group seem to be more serious than the mental health problems we found in non-maltreated high-risk children.

Id.

30. See MICHAEL R. PETTIT & PATRICK CURTIS, CHILD ABUSE AND NEGLECT: A LOOK AT THE STATES 96 (1997).

31. See FORD, *supra* note 1, at ix.

32. See FORD, *supra* note 1, at x (citing L. Katz, *Concurrent Planning Fulfills the Interest of P. L.* 96-272, in BRIDGES 5 (1996)).

twice the rate as children who did not receive these services.”³³

In its study of three successful concurrent planning programs, including LSS and Jefferson County, the North American Council on Adoptable Children discussed four characteristics of the programs’ practices.³⁴ The first characteristic of successful concurrent planning is that it “works towards family reunification, while at the same time developing an alternative permanent plan, such as adoption or legal guardianship.”³⁵ Second, it “emphasizes careful assessment of birth families to determine the likelihood of reunification, and provides birth families with intensive, time-limited services to address their central problem.”³⁶ Third, it places children in foster homes that are able to commit until the case is resolved.³⁷ Finally, it “targets young children because they suffer separations acutely.”³⁸ All of these simultaneous efforts expedite permanency planning and protect the “childhood attachments by building a stronger bond between the child and his or her birth parents through reunification, or by preserving the tie between the child and his or her permanency planning parents through adoption.”³⁹

V. MINNESOTA LEGISLATION

The 1998 Legislature established concurrent permanency planning in Minnesota with the goal of achieving early permanency for children, decreasing children’s length of stay in foster care, reducing the number of moves children experience in foster care, and developing a group of families who will work towards reunification and also serve as permanent families for children.⁴⁰

The law applies to children “who are placed out of the home of their parents pursuant to a court order, or who have been voluntarily placed out of the home by the parents for sixty days or

33. See FORD, *supra* note 1, at x (citing P. SCHENE, EXPEDITED PERMANENCY PLANNING: A PRELIMINARY EVALUATION OF IMPLEMENTATION IN JEFFERSON AND BOULDER COUNTIES (1997)).

34. See FORD, *supra* note 1, at x.

35. *Id.*

36. *Id.*

37. See *id.*

38. *Id.*

39. *Id.* at ix.

40. See MINN. STAT. §§ 260C.001-260C.451 (Supp. 1999) (Child Protection Provisions of the Juvenile Court Act).

more.”⁴¹ The law *does not* apply to children who are developmentally disabled or emotionally handicapped.⁴² The statute also provides for “[development of] guidelines and protocols for social service agencies involved in concurrent permanency planning, including criteria for conducting concurrent permanency planning based on relevant factors.”⁴³ These factors include:

- 1) age of the child and duration of out of home placement;
- 2) prognosis for successful reunification with parents;
- 3) availability of relatives and other concerned individuals to provide support or a permanent placement for the child; and
- 4) special needs of the child and other factors affecting the child’s best interest.⁴⁴

A key component of concurrent planning is a provision requiring parental involvement and disclosure. It states that “concurrent permanency planning programs must include involvement of parents and full disclosure of their rights and responsibilities; goals of concurrent permanency planning; support services that are available for families; permanency options; and the consequences of not complying with case plans.”⁴⁵

The legislature allocated \$9.3 million for this program, and provided that counties could use family preservation fund grants for the program.⁴⁶ Additional funds were appropriated for concurrent planning in 1999.

VI. “SARA” REVISITED

Sara’s foster care journey would have been very different in a concurrent planning program. Under the program, one possible way the situation would have been resolved is as follows:⁴⁷

41. MINN. STAT. § 260C.213 (Supp. 1999).

42. *See id.* § 260C.213, subd. 1(b).

43. *Id.*

44. *Id.* § 260C.213, subd. 3.

45. *See id.*

46. *See id.* § 260C.213, subd. 5; *see also* MINN. STAT. § 256F.05, subd. 8(c) (Supp. 1999).

47. The revised case study was compiled from typical results that occur in

Sara was removed from her mother's care after failed attempts at help from other services and was subsequently referred to the concurrent planning program. Since that time, Sara lived with one permanency planning family. The concurrent planning program first attempted to counsel the birth mother so she could attain the help she needed. A search was conducted for a relative who could care for Sara. The permanency planning family counseled the birth mother about finishing her alcohol and drug treatment and encouraged her to live in a supervised halfway house where Sara could join her.

The birth mother eventually admitted that she could neither handle the chemical dependency treatment nor the parenting of Sara. Because she knew the permanency planning family, she relinquished her parental rights with the understanding that she could see Sara on the holidays, as long as the mother was clean and sober. Sara now leads a normal life with her adopted family and explains to other children that she has two mothers. Follow-up treatment under the program has revealed that Sara, her birth mother and her permanency planning family are satisfied with the arrangement.

concurrent planning programs.
